

02 FEB 2009

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In re Application of
Levine et al.
Application No.: 10/574,826
PCT No.: PCT/US2004/033230
Int. Filing Date: 08 October 2004
Priority Date: 09 October 2003
Attorney Docket No.: 33331006
For: Antiviral Proteins With Improved
Properties And Methods Therefor

DECISION

This is with regard to the petition under 37 CFR 1.181 filed on 06 October 2008.

BACKGROUND

This international application was filed on 08 October 2004, designated the United States, and claimed an earliest priority date of 09 October 2003. Accordingly, the 30 month time period for paying the basic national fee in the United States expired at midnight on 09 April 2006. Applicants timely filed *inter alia* the basic national fee on 06 April 2006.

On 22 January 2008, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring submission of an oath or declaration compliant with 37 CFR 1.497(a) and (b), the \$65.00 surcharge under 37 CFR 1.492(h), and a statement that the content of the CRF is identical to the written (on paper or CD) sequence listing and, where applicable, contains no new matter.

On 26 September 2008, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to counsel, indicating that this international application had become abandoned with respect to the national stage in the United States for failure to timely reply to a Notification of Missing Requirements mailed on 22 January 2008.

DISCUSSION

Petitioner requests withdrawal of the holding of abandonment, on the basis that a response allegedly was filed on 10 March 2008. Petitioner provides "a copy of the papers submitted March 10, 2008," as well as a copy of a return postcard receipt, stamped as received by "OIPE" on "MAR 10 2008," which itemizes a 4-page executed declaration, a copy of the Notification of Missing Requirements, a check for \$65.00, a Response, a "Copy of statement in support of computer readable forms...," and a PAIR printout. MPEP 503 explains in part that "A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Following this practice, the Response, statement and declaration filed on 06 October 2008 are being accepted as copies of the respective documents filed on 10 March 2008 and itemized on the postcard receipt. The electronic records of the USPTO reflect payment

of the \$65.00 surcharge on 10 March 2008. The application file includes a statement, filed on 17 August 2007, that the content of the paper copy and the CRF are the same and contain no new matter. Accordingly, the holding of abandonment is hereby WITHDRAWN, and the Notification of Abandonment mailed on 26 September 2008 is hereby VACATED.

Inspection of the declaration filed on 06 October 2008 (accepted as a copy of the declaration filed on 10 March 2008) reveals that it appears to have been assembled using separately signed sheets. MPEP 201.03 explains in part that

While each inventor need not execute the same oath or declaration, each oath or declaration executed by an inventor must contain a complete listing of all inventors so as to clearly indicate what each inventor believes to be the appropriate inventive entity. Where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration. For example, where the inventive entity is A and B, a declaration may not be executed only by A naming only A as the inventor and a different declaration may not be executed only by B naming only B as the inventor, which two declarations are then combined into one declaration with a first page of boiler plate, a second page with A's signature, and a second page with B's signature (so that it appears that the declaration was executed with the entire inventive entity appearing in the declaration when it did not).

In view of this policy, it would not be appropriate to accept the declaration of record.

DECISION

The petition is GRANTED, to the extent noted above.

This application is being forwarded to the Office of Patent Application Processing for further processing, including the preparation and mailing of a new Notification of Defective Response (Form PCT/DO/EO/916) requiring the submission of an oath or declaration compliant with 37 CFR 1.497(a) and (b).

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